

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BUTTE DIVISION**

L. KEELEY CONSTRUCTION CO., an Illinois corporation,

Plaintiff,

vs.

DEVELOPERS SURETY AND INDEMNITY COMPANY, a California corporation, THE OHIO CASUALTY INSURANCE COMPANY, an Ohio corporation, and WEATHERGUARD CORPORATION, a Montana corporation,,

Defendants.

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DEVELOPERS SURETY AND INDEMNITY COMPANY, a California corporation, and THE OHIO CASUALTY INSURANCE COMPANY, an Ohio corporation,

Third-Party Plaintiffs,

vs.

WEATHERGUARD CORPORATION, a Montana corporation, and VAN SMITH,

Third-Party Defendants.

No. CV-19-39-BU-SEH

**ORDER**

On December 13, 2019, Plaintiff filed a Second Amended Complain naming

as Defendants (1) Developers Surety and Indemnity Company (“Developers”), (2) The Ohio Casualty Insurance Company (“Ohio”), and (3) Weatherguard Corporation (“Weatherguard”).<sup>1</sup> On January 24, 2020, Defendants Developers and Ohio filed an Answer to the Second Amended Complaint, a Cross Claim against Weatherguard, and a Third-Party Complaint against Van Smith (“Smith”).<sup>2</sup> Weatherguard and Smith answered the Cross-Claim and Third-Party Complaint on March 10, 2020,<sup>3</sup> Weatherguard answered the Second Amended Complaint on March 27, 2020, and on March 30, 2020, Weatherguard and Smith filed a document entitled “Amended Answer to Developer Surety and Indemnity Company and The Ohio Casualty Insurance Company’s Cross Claim and Third-Party Complaint and Demand for Jury Trial.”<sup>4</sup>

On July 6, 2020, Developers and Ohio filed an Amended Cross-Claim and Amended Third-Party Complaint<sup>5</sup> against Weatherguard and Smith. On July 21, 2020, the Court granted Weatherguard and Smith until August 3, 2020, in which to file answers to the Amended Cross-Claim and Amended Third-Party

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<sup>1</sup> Doc. 19.

<sup>2</sup> Doc. 25.

<sup>3</sup> Doc. 30.

<sup>4</sup> Doc. 34.

<sup>5</sup> Doc. 39.

Complaint.<sup>6</sup>

On July 30, 2020, Smith filed Notice of Bankruptcy.<sup>7</sup> Proceedings in this case were stayed.<sup>8</sup> On January 12, 2021, the Bankruptcy Court issued its Order of Discharge.<sup>9</sup> The case was closed by the Clerk on January 12, 2021. On February 4, 2021, Smith reported bankruptcy proceedings in Case No. 20-bk-40079 were concluded, that the Bankruptcy Court Order of Discharge had been entered, and the case was closed.<sup>10</sup>

Answers by Weatherguard and Smith to the Amended Cross-Claim and the Amended Third-Party Complaint filed by Developers and Ohio have not been filed.<sup>11</sup>

ORDERED:

1. The bankruptcy stay ordered on September 10, 2020, is VACATED.<sup>12</sup>
2. Weatherguard and Smith each shall have to and including March 5,

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<sup>6</sup> Doc. 41.

<sup>7</sup> Doc. 42.

<sup>8</sup> Doc. 43.

<sup>9</sup> *In re Van Earl Smith*, 4:20-bk-40079-BPH (Bankr. Mont. 2021) at Doc. 28.

<sup>10</sup> Doc. 44.

<sup>11</sup> Doc. 39.

<sup>12</sup> Doc. 43.

2021, in which to file an answer to the Amended Cross-Claim and Amended Third-Party Complaint.<sup>13</sup>

3. All deadlines established by the Scheduling Order of November 19, 2019,<sup>14</sup> are VACATED, to be reset by further Order of the Court.

DATED this 19<sup>th</sup> day of February, 2021.

  
SAM E. HADDON  
United States District Court

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<sup>13</sup> Doc. 39.

<sup>14</sup> Doc. 18.